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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/846,804	05/01/2001	Patrick Fitz-Gerald Kelly	FUNEDU.001PR	5190

7590 07/01/2004

FUN EDUCATION, INC.
750 B STREET
SUITE 1720
SAN DIEGO, CA 92101

EXAMINER

DAY, HERNG DER

ART UNIT	PAPER NUMBER
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2128

DATE MAILED: 07/01/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/846,804

Applicant(s)

KELLY, PATRICK FITZ-GERALD

Examiner

Herng-der Day

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 May 2001.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-6 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 31 August 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-6 have been examined and claims 1-6 have been rejected.

Priority

2. Applicant's claim for domestic priority under 35 U.S.C. 119(e) is acknowledged. The provisional application number is 60/201,251, filed May 1, 2000. However, the provisional application upon which priority is claimed fails to provide adequate support under 35 U.S.C. 112 for claims 1-6 of this application. For example, the "simulation database" or the "chance value" has not been disclosed in the provisional application.

Drawings

3. The drawings are objected to for the following reasons. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application.

- 3-1. Based on the description in lines 25-26 of page 17, "After calculating the probability, if the person is not encountered, then exit the algorithm", therefore, it appears that state 2508 in Figure 25 should have a direct path to "Return".

Specification

4. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the Applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (e) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) BRIEF SUMMARY OF THE INVENTION.
- (g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (h) DETAILED DESCRIPTION OF THE INVENTION.
- (i) CLAIM OR CLAIMS (commencing on a separate sheet).
- (j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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6. Claims 4-5 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

6-1. Claim 4 recites the limitation “the simulation database inspects each entered object ... to determine a set of preconditions for a link”. However, the detail of how a “simulation database” may inspect an object has not been disclosed in the specification. Therefore, without undue experimentation, it is unclear for one skilled in the art how to let a “simulation database” inspect an object. Furthermore, as shown in Figures 13 and 14, the user creates preconditions. Accordingly, without undue experimentation, it is unclear for one skilled in the art how a “simulation database” may determine a set of preconditions for a link.

6-2. Claim 5 recites the limitation “the simulation database calculates the chance value for a link”. However, the detail of how a “simulation database” may calculate the chance value has not been disclosed in the specification. Therefore, without undue experimentation, it is unclear for one skilled in the art how to let a “simulation database” calculate the chance value.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8-1. Preamble of claim 1 recites a “method”, however, the body of the claim recites no process steps but software elements. Claims 2-6 fail to resolve the problems of claim 1. In other words, claims 2-6 fail to positively recite any active process steps.

8-2. Claims 3-6 recite the limitation “the simulation database” in each claim. There is insufficient antecedent basis for this limitation in the claim because only “a simulation database entry” has been recited in the independent claim 1.

8-3. Claim 4 recites the limitation “each entered object” in lines 1-2 of the claim. There is insufficient antecedent basis for this limitation in the claim.

8-4. Claim 5 recites the limitation “the chance value” in lines 1-2 of the claim. There is insufficient antecedent basis for this limitation in the claim.

8-5. Claim 6 recites the limitation “the object selected” in line 1 of the claim. There is insufficient antecedent basis for this limitation in the claim. For the purpose of claim examination, the Examiner will presume that “the object selected” refers to “an object”.

Claim Rejections - 35 USC § 101

9. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

10. Claims 1-6 are rejected under 35 U.S.C. 101 because the inventions as disclosed in claims are directed to non-statutory subject matter.

10-1. Preamble of claim 1 recites a “method” but the body of the claim fails to recite statutory process steps. Even if Applicant intended for machine claims, the claims fail to tangibly embody any of the software elements. Thus, the claims would still be non-statutory.

10-2. The Examiner acknowledges that even though the claims are presently considered non-statutory they are additionally rejected below over the prior art. The Examiner assumes the

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Applicants will amend the claims to overcome the 101 rejections and thus make the claims statutory.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1-4 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Jordan et al., U.S. Patent 5,745,113 issued April 28, 1998.

12-1. Regarding claim 1, Jordan et al. disclose a method of creating computer-based simulations, using database entries and menu selections, rather than writing complex software code, comprising:

an authoring tool for building computer-based learning software or games (a suite of tools, column 5, lines 32-37);

a set of scenes created by said authoring tool (a sequence of maps, column 3, lines 3-9);

a set of objects, such as text and multimedia comprising each scene (a set of map objects, column 3, lines 3-9); and

a simulation database entry for each object (database editor interface, column 7, lines 51-55).

12-2. Regarding claim 2, Jordan et al. further disclose objects are displayed within a scene based on a set of preconditions (to control whether and how objects are displayed, column 8, lines 28-35).

12-3. Regarding claim 3, Jordan et al. further disclose variable changes defined by a simulation database are applied as a new scene is entered (create a map, column 6, lines 27-39).

12-4. Regarding claim 4, Jordan et al. further disclose iteratively moving through all possible links to determine a set of preconditions for a link (relationship diagram, column 3, lines 9-15).

12-5. Regarding claim 6, Jordan et al. further disclose an object queries the simulation database to determine link destination (hypertext-like links, column 8, lines 6-7).

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jordan et al., U.S. Patent 5,745,113 issued April 28, 1998, as applied in claim 1 above, in view of Koza, U.S. Patent 5,136,686 issued August 4, 1992.

14-1. Regarding claim 5, Jordan et al. fail to expressly disclose selecting a link by proportionate selection based on the chance value of each link.

Koza discloses a non-linear genetic algorithm for solving problems, e.g., modeling of the first group of problems or game playing of the third group of problems (Abstract). Koza also

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discloses, "In connection with selection of individuals on the basis of fitness, we use the phrase 'relatively high value' herein to connote either selection based on a probability proportionate to normalized fitness (the theoretically preferred approach) or selection with equal probability among those individuals having fitness values outside some threshold" and "fitness proportionate selection is the most justified theoretically" (Koza, column 23, lines 25-34).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Jordan et al. to incorporate the teachings of Koza to obtain the invention as specified in claim 5 because Koza teaches "fitness proportionate selection is the most justified theoretically" in connection with selection of individuals on the basis of fitness for solving problems, e.g., game playing or modeling.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

Reference to Gudmundson et al., U.S. Patent 5,680,619 issued October 21, 1997, is cited as disclosing a multimedia authoring system.

Reference to Stelovsky, U.S. Patent 5,782,692 issued July 21, 1998, is cited as disclosing a time-segmented multimedia game playing and authoring system.

Reference to Greenfield et al., U.S. Patent 6,544,294 issued April 8, 2003, and filed May 27, 1999, is cited as disclosing a method for creating, editing, and displaying works utilizing temporal relationships and structural tracks.

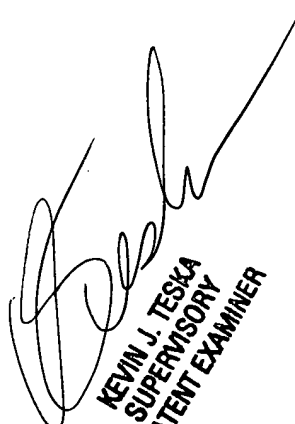
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16. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Herng-der Day whose telephone number is (703) 305-5269. The Examiner can normally be reached on 9:00 - 17:30.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Kevin J Teska can be reached on (703) 305-9704. The fax phone numbers for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Herng-der Day
June 27, 2004



KEVIN J. TESKA
SUPERVISORY
PATENT EXAMINER